

2005 DRAFTING REQUEST

Bill

Received: **01/24/2005**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Jennifer Steagall**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - abuse and neglect
Children - TPR and adoption
Children - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Children's Code and Juvenile Justice Code; various changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 02/28/2005	wjackson 03/04/2005		_____			S&L
/1			rschluet 03/04/2005	_____	lnorthro 03/04/2005		S&L
/2	gmalaise 05/20/2005	wjackson 06/07/2005	rschluet 06/07/2005	_____	lemery 06/07/2005	mbarman 07/28/2005	

FE Sent For:

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Intro.

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FE Sent For:

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Malaise, Gordon

From: Stegall, Jennifer
Sent: Monday, January 24, 2005 1:17 PM
To: Malaise, Gordon
Subject: Senator Roessler bill draft request

Hi Gordon,

Per our conversation, I have listed the changes Senator Roessler would like included in a bill draft. Please let me know if I need to provide further clarification regarding any of the below changes. Please note that Items 1-6 should be in one bill draft. Number 7 should be a separate bill.

Thanks for your help.

Jennifer Stegall
Office of Senator Carol Roessler
608-266-5300

1. Amend 48.981 (3) (c) Child Abuse and Neglect reports

The department should not be required to investigate allegations of child abuse and neglect by a non-caregiver. In such cases, protection of the child by the caregiver is rarely at issue. When it is, the department would investigate if the suspicion arose that the caregiver "failed to protect." Non-caregiver investigations could best be completed by law enforcement.

~~The department spends an inordinate amount of time investigating cases of "mutual sexually activity" between teens or between younger children. **The department should not be required to conduct these types of investigations unless the report contains allegations of force or coercion.**~~

2. Eliminate 938.13 (6) and (6m) Juvenile Court Jurisdiction over Truants and Dropouts

~~This is an area in which we have been remarkably unsuccessful. **Truancy issues should be handled at the school level.** Our program, services and resources need to be concentrated on more serious issues of delinquency. When truancy is also an issue with a delinquent, it is appropriate for us to get involved. We are not successful in alleviating delinquency problems with youth who are referred to Juvenile Court and placed on supervision. We do not have the ability to order schools to provide alternative educational programming to at risk youth. There are many alternative approaches to the problem of truancy, such as municipal ordinances., etc. If truancy is the only major issue with the juvenile, it takes an inordinate amount or scarce resources for the department to deal with it-resources that are in short supply to deal with serious delinquent offenders.~~

3. Change 48.21 Hearing for child in custody

Currently, 48.21 mandates a hearing before a judge within 48 hours of the time the decision to hold a child in custody is made. S. 48.21 (1) basically mandates the filing of a CHIPS petition within 24 hours if the judge

holds the child in custody, except the 48.21 (1) (b) allows an additional 72 hours for certain reasons. **If the additional reason of "...to believe that additional time is required to determine the necessity of filing a petition or that the child..."**

4. Change 48.57 Powers and duties of Department and county Departments providing child welfare services.

Amend 48.57 (1) (hm) to read "...under its guardianship ONLY for adoption by the foster parent or treatment foster parent." This change makes the intent of the statute more explicit.

5. Change 48.21 Hearing for child in custody

Currently, 48.21 mandates a hearing before a judge within 48 hours of the time the decision to hold a child in custody is made. S. 48.21 (1) basically mandates the filing of a CHIPS petition within 24 hours if the judge holds the child in custody, except that 48.21 (1) (b) allows an additional 72 hours for certain reasons. **An additional reason of: "...to believe that additional time is required to determine the necessity of filing a petition, or that the child..." is needed.** The addition of this language would allow the department more time work to resolve the situation without further court involvement. Because current time restrictions are so tight, there are instances of families being prematurely brought under court jurisdiction, when, with a little more time, the situation could have been avoided.

6. Make definitions of relative consistent throughout the statutes. Especially CHIPS and Kinship definitions.

48.02(15), 938.02(15), 48.977(1), 48.57(3m)(2), 48.911(1)(hm)

48.02 (15)

48.75 (1g)(a)1.

48.57 (3m)(a)2.

48.977 (1)

(3m)(a)2.

48.981 (1)(hm) RP

48.62 (2)

938.02 (15)

7. (Separate) Create additional CHIPS jurisdiction 48.13 to include educational neglect.

This may be needed especially if we request eliminating truancy from Chapter 938. We will occasionally receive referrals from a school district in regards to truancy involving young children (1st grade through 4th or 5th grade) where the children are truanting school as a direct result of the parent who is refusing to take or send the child, or who intentionally keeps the child home. We also receive referrals on older children where the parent keeps the child home to provide daycare for younger children in the family. While we do not feel that we are successful with older truants, we do feel that we need to have some jurisdiction over those cases where it is clearly due to neglect on the parent's part. We have discussed these with the DA in the past and have pursued under JIPS Jurisdiction, yet it seems more appropriate for the younger children to be pursued as a CHIPS matter. Especially since the disposition for school truants under JIPS are not appropriate for these types of cases.

Malaise, Gordon

From: Stegall, Jennifer
Sent: Tuesday, February 01, 2005 9:35 PM
To: Malaise, Gordon
Subject: DHFS Regulatory Reform Bill

Hi Gordon,

I have attached revised drafting instructions for what Senator Roessler now calls, "The DHFS Regulatory Reform Bill." She has decided that she would no longer like to include language regarding social service departments investigating cases of "mutual sexually activity" between teens. She also decided that she would no longer like to include the elimination of 938.13 (6) and (6m); Juvenile Court Jurisdiction over Truants and Dropouts.

There are several changes to current law that should be included in one bill. In addition, there is an issue Senator Roessler would like to address as part of a second bill. This relates to creating additional CHIPS jurisdiction to include educational neglect. A more detailed request for the two bills is attached.

I apologize for the changes. In putting further thought into the DHFS Regulatory Reform bill, Senator Roessler decided it would be best to modify the request.

Thank you and please feel free to contact me with any questions.

Jennifer Stegall
Office of Senator Carol Roessler
608-266-5300



2-1-05 revised fdl
soc serv dr...

DHFS Regulatory Reform Bill

□ Amend 48.981 (3) (c) Child Abuse and Neglect reports

-The department should not be required to investigate allegations of child abuse and neglect by a non-caregiver (neighbor, etc.). In such cases, protection of the child by the caregiver (parents/guardian) is rarely at issue. When it is, the department would investigate if it was thought that the caregiver "failed to protect." Non-caregiver investigations could best be completed by law enforcement.

□ Change 48.21 Hearing for child in custody

-Currently, 48.21 mandates a hearing before a judge within 48 hours of the time the decision to hold a child in custody is made. S. 48.21 (1) basically mandates the filing of a CHIPS petition within 24 hours if the judge holds the child in custody, *except that 48.21 (1) (b) allows an additional 72 hours for certain reasons.*

-An additional reason should be added, *"to believe that additional time is required to determine the necessity of filing a petition or that the child..."*

-The addition of this language would allow the department more time to work to resolve the situation without further Court involvement. Because current time restrictions are so tight, there are instances when families are prematurely brought under court jurisdiction, when, with a little more time, the situation could have been avoided.

□ Change 48.57 Powers and duties of Department and county Departments providing child welfare services.

-Amend 48.57 (1) (hm) to read "...under its guardianship ONLY for adoption by the foster parent or treatment foster parent."

-This change makes the intent of the statute more explicit.

□ Make definitions of relative consistent throughout the statutes. Especially CHIPS and Kinship definitions.

-48.02(15), 938.02(15), 48.977(1), 48.57(3m)(2), 48.911(1) (fm)



State of Wisconsin
2005 - 2006 LEGISLATURE

Week of 2/28

LRB-1850/?

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1 **AN ACT** ...; **relating to:** the investigation of child abuse or neglect reports in which
2 a person who is not a caregiver of the child is suspected of the abuse or neglect
3 of the child; defining the persons who are considered to be relatives of a child
4 or juvenile for purposes of the Children's Code and the Juvenile Justice Code;
5 extending the time for which a child may be held in custody when additional
6 time is required to determine whether the filing of a petition initiating
7 proceedings under the Children's Code is necessary; and the authority of a
8 county department of human services or social services in a county other than
9 Milwaukee County to place a child for adoption in the home of the child's foster
10 or treatment foster parents.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Children's Code and the Juvenile Justice Code relating to the investigation of child abuse or neglect reports in which a person who is not a caregiver of the child is suspected of the abuse or neglect of the child; defining the persons who are considered to be relatives of a child or juvenile for purposes of the Children's Code and the Juvenile Justice Code; extending the time for which a child may be held in custody when additional time is required to determine whether the filing of a petition initiating proceedings under the Children's Code is necessary; and the authority of a county department of human services or

social services (county department) in a county other than Milwaukee County to place a child for adoption in the home of the child's foster or treatment foster parents.

The Those changes are as follows:

Child abuse investigations of noncaregivers

Under current law, certain persons having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur must report that suspected or threatened abuse or neglect to the county department of human services or social services or, in Milwaukee County, to the Department of Health and Family Services (DHFS) or a child welfare agency under contract with DHFS (collectively "agency") or to the sheriff or police department. Current law also permits any other person having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur to make such a report.

Current law requires the sheriff or police department to refer to an agency all cases of child abuse or neglect reported to it and the agency, within 24 hours after receiving a report, to initiate a diligent investigation to determine if the child is in need of protection or services. Current law also specifies certain procedures that an agency must follow in investigating cases in which there is reason to suspect that the child was abused or neglected, or was threatened with abuse or neglect, by a caregiver, which is defined under current law as a relative, guardian, or legal custodian of the child; a person who resides or has resided regularly or intermittently in the same dwelling as the child; an employee of a residential facility or a residential care center for children and youth in which the child was or is placed; a person who provides or has provided care for the child in or outside of the child's home; or any other person who exercises or has exercised temporary or permanent control or supervision over the child.

This bill permits, rather than requires, the sheriff or police department to refer to an agency a case in which a person who is not a caregiver of a child is suspected of the abuse or neglect, or of the threatened abuse or neglect, of the child and permits, rather than requires, the agency to initiate a diligent investigation to determine if the child is in need of protection or services. In cases in which a caregiver is suspected of the abuse or neglect, or of the threatened abuse or neglect, of a child, in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child, or in which it cannot be determined who abused or neglected a child, the sheriff or police department must refer the case to an agency and the agency must investigate the case as under current law.

Definition of "relative" in Children's Code and Juvenile Justice Code

Currently, for purposes of the Children's Code and the Juvenile Justice Code, a "relative" of a child or juvenile is defined as a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt, whether the relationship is by blood, marriage, or adoption. For purposes of determining eligibility to receive kinship care or long-term kinship care payments for providing care and maintenance for a child, for purposes of determining eligibility

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to be appointed as the guardian of a child in need of protection or services, and for ^{the purpose of} exempting a relative who is providing care and maintenance for a child from having to obtain a foster home license, ^{that} ~~that~~ definition is expanded to include a stepbrother or stepsister, any person of a preceding generation as denoted by the prefix grand, great, or great-great, and the spouse of any relative, even if the marriage is terminated by death or divorce. ^{That} ~~That~~ definition is also expanded for purposes of investigating any suspected or threatened abuse or neglect of a child by a caregiver of the child to include a second cousin, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle, or steppaunt.

This bill expands the definitions of a "relative" of a child or juvenile for purposes of the Children's Code and the Juvenile Justice Code to include, in addition to the relatives currently listed in those definitions, a stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, second cousin, stepuncle, steppaunt, any person of a preceding generation as denoted by the prefix grand, great, or great-great, and the spouse of any relative, even if the marriage is terminated by death or divorce. The bill also conforms the various other definitions of "relative" found in the Children's Code to ^{that} ~~the~~ expanded definition, except that under the bill the definitions of "kinship care relative," "long-term kinship care relative," and "relative" for purposes of eligibility to be appointed as the guardian of a child in need of protection or services do not include a parent of the child.

Holding a child in custody

Under current law, if a child who has been taken into custody under the Children's Code is not released, a judge of the court assigned to exercise jurisdiction under the Children's Code (juvenile court) or a circuit court commissioner must conduct a hearing within 48 hours of the time the decision to hold the child in custody was made, exclusive of Saturdays, Sundays, and legal holidays, and a petition initiating proceedings under the Children's Code must be filed by the time of the hearing. If a hearing is not held within the time required or if a petition is not filed by the time of the hearing, the child must be released, except that if a hearing is held, but no petition is filed, the child may be held in custody for an additional 72 hours, exclusive of Saturdays, Sundays, and legal holidays, if the juvenile court judge or circuit court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or others or that the child's parent, guardian, or legal custodian or another responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care for the child.

This bill permits a child to be held in custody for an additional 72 hours, when no petition is filed by the time of the custody hearing, if the juvenile court judge or circuit court commissioner determines that probable cause exists to believe that additional time is required to determine whether the filing of a petition initiating proceedings under the Children's Code is necessary.

Placement of a child for adoption

Current law permits a county department in a county other than Milwaukee County to accept guardianship of a child whom the county department has placed in a foster or treatment foster home, ~~when appointed by the juvenile court,~~ and to place

the child for adoption by the child's foster or treatment foster parents. This bill specifies that a county department in a county other than Milwaukee County that accepts guardianship of a child whom the county department has placed in a foster or treatment foster home may place the child only in the home of the child's foster or treatment foster parents and only for the purpose of adoption by those parents.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

and
space

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.02 (15) of the statutes is amended to read:

2 48.02 (15) "Relative" means a parent, grandparent, ~~greatgrandparent,~~
3 stepparent, brother, sister, stepbrother, stepsister, half brother, half sister,
4 brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, or
5 aunt. ~~This relationship shall be, stepuncle, stepaunt, or any person of a preceding~~
6 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
7 marriage, or legal adoption, or the spouse of any person named in this subsection,
8 even if the marriage is terminated by death or divorce.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19), 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

9 **SECTION 2.** 48.21 (1) (a) of the statutes is amended to read:

10 48.21 (1) (a) If a child who has been taken into custody is not released under
11 s. 48.20, a hearing to determine whether the child shall continue to be held in custody
12 under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit
13 court commissioner within 48 hours of the time the decision to hold the child was
14 made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing
15 a petition under s. 48.25 shall be filed, except that no petition need be filed ~~where a~~
16 when the child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or where when
17 the child is a runaway from another state, in which case a written statement of the

1 reasons for holding ^{↓ ↓} ~~a~~ the child in custody shall be substituted if the petition is not
2 filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays,
3 and legal holidays, or if no petition or statement has been filed at the time of the
4 hearing, the child shall be released except as provided in ~~par. (b)~~ pars. (b) and (bm).
5 A parent not present at the hearing shall be granted a rehearing upon request for
6 good cause shown.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

7 **SECTION 3.** 48.21 (1) (b) of the statutes is renumbered 48.21 (1) (b) (intro.) and

8 amended to read:

(intro.)

9 48.21 (1) (b) [^] If no petition has been filed by the time of the hearing, a child may
10 be held in custody with approval of the judge or circuit court commissioner for an
11 additional 72 hours from the time of the hearing, excluding Saturdays, Sundays, and
12 legal holidays, only if, as a result of the facts brought forth at the hearing, the judge
13 or circuit court commissioner determines that probable cause exists to believe ~~that~~
14 any of the following:

15 2. That the child is an imminent danger to himself or herself or to others, ~~that,~~

16 3. That probable cause exists to believe that the parent, guardian, or legal
17 custodian of the child or other responsible adult is neglecting, refusing, unable, or
18 unavailable to provide adequate supervision and care ~~or,~~

19 4. That, if the child is an expectant mother who was taken into custody under
20 s. 48.19 (1) (cm) or (d) 8., ~~that~~ probable cause exists to believe that there is a
21 substantial risk that if the child expectant mother is not held, the physical health of
22 the unborn child, and of the child when born, will be seriously affected or endangered
23 by the child expectant mother's habitual lack of self-control in the use of alcohol
24 beverages, controlled substances, or controlled substance analogs, exhibited to a

1 severe degree, and to believe that the child expectant mother is refusing or has
2 refused to accept any alcohol or other drug abuse services offered to her or is not
3 making or has not made a good faith effort to participate in any alcohol or other drug
4 abuse services offered to her. The

5 (bm) An extension under par. (b) may be granted only once for any petition. In
6 the event of failure to file a petition within the extension period provided for in this
7 ~~paragraph~~ par. (b), the judge or circuit court commissioner shall order the child's
8 immediate release from custody.

History: 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

9 **SECTION 4.** 48.21 (1) (b) 1. of the statutes is created to read:

10 48.21 (1) (b) 1. That additional time is required to determine whether the filing
11 of a petition initiating proceedings under this chapter is necessary.

12 **SECTION 5.** 48.57 (1) (hm) [✓] of the statutes is amended to read:

13 48.57 (1) (hm) If a county department in a county with a population of less than
14 500,000, to accept guardianship, when appointed by the court, of a child whom the
15 county department has placed in a foster home or treatment foster home under a
16 court order or voluntary agreement under s. 48.63 and to place that child under its
17 guardianship for adoption by the foster parent or treatment foster parent. A county
18 department that accepts guardianship of a child under this paragraph may place the
19 child only in a placement and only for the purpose authorized in this paragraph.

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

20 **SECTION 6.** 48.57 (3m) (a) 2. of the statutes is amended to read:

21 48.57 (3m) (a) 2. "Kinship care relative" means a ~~stepparent, brother, sister,~~
22 ~~stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a~~
23 ~~preceding generation as denoted by the prefix of grand, great or great-great,~~

1 ~~whether by blood, marriage or legal adoption, or the spouse of any person named in~~
2 ~~this paragraph, even if the marriage is terminated by death or divorce~~ relative other
3 than a parent. *plain*

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

4 **SECTION 7. 48.57 (3n) (a) 2. of the statutes is amended to read:**

5 48.57 (3n) (a) 2. "Long-term kinship care relative" means a stepparent,
6 ~~brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any~~
7 ~~person of a preceding generation as denoted by the prefix of grand, great or~~
8 ~~great-great, whether by blood, marriage or legal adoption, or the spouse of any~~
9 ~~person named in this paragraph, even if the marriage is terminated by death or~~
10 divoree relative other than a parent. *plain*

History: 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 271, 354, 418, 447, 449; 1979 c. 34, 221; 1981 c. 329; 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 176; 1987 a. 339; 1993 a. 385, 395, 446, 491; 1995 a. 27 ss. 2575 to 2579m, 9126 (19); 1995 a. 77, 289, 443; 1997 a. 3, 27, 35, 36, 41, 105, 237, 252, 292; 1999 a. 9, 103, 133, 162; 2001 a. 16 ss. 1629, 4036-4038, 4040, 4042, 4043; 2001 a. 38, 59, 69, 109.

11 **SECTION 8. 48.62 (2) of the statutes is amended to read:**

12 48.62 (2) A relative as ~~defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a)~~
13 or a guardian of a child, who provides care and maintenance for a the child, is not
14 required to obtain the license specified in this section. The department, county
15 department, or licensed child welfare agency as provided in s. 48.75 may issue a
16 license to operate a foster home or a treatment foster home to a relative who has no
17 duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster
18 home or treatment foster home for a specific child who is either placed by court order
19 or who is the subject of a voluntary placement agreement under s. 48.63. The
20 department, a county department, or a licensed child welfare agency may, at the
21 request of a guardian appointed under s. 48.977 or 48.978 or ch. 880, license the
22 guardian's home as a foster home or treatment foster home for the guardian's minor
23 ward who is living in the home and who is placed in the home by court order.

1 Relatives with no duty of support and guardians appointed under s. 48.977 or 48.978
2 or ch. 880 who are licensed to operate foster homes or treatment foster homes are
3 subject to the department's licensing rules.

History: 1977 c. 354 s. 101; 1977 c. 418, 447; 1981 c. 20; 1985 a. 29 s. 3202 (23); 1985 a. 176, 281, 332, 403; 1989 a. 31, 336; 1993 a. 395 ss. 31m, 39; 1993 a. 437 s. 67; 1993 a. 446 ss. 79 to 82, 134m; 1993 a. 491; 1995 a. 275; 1997 a. 27, 334; 1999 a. 9; 2001 a. 69.

4 **SECTION 9. 48.75 (1g) (a) 1.** of the statutes is amended to read:

5 48.75 (1g) (a) 1. The person who will be licensed to operate the foster home is
6 a relative, ~~as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a.,~~ or a
7 guardian of the child who will be placed in the foster home.

History: 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 336; 1993 a. 395, 446; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 103.

8 **SECTION 10. 48.977 (1)** of the statutes is amended to read:

9 48.977 (1) DEFINITION. In this section, "relative" means a relative ~~as defined~~
10 ~~in s. 48.02 (15) or a person specified in s. 48.57 (3m) (a) 2~~ other than a parent.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109.

11 **SECTION 11. 48.981 (1) (fm)** of the statutes is repealed.

12 **SECTION 12. 48.981 (3) (a) 2.** of the statutes is renumbered 48.981 (3) (a) 2.
13 (intro.) and amended to read:

14 48.981 (3) (a) 2. (intro.) The sheriff or police department shall within 12 hours,
15 exclusive of Saturdays, Sundays, or legal holidays, refer to the county department
16 or, in a county having a population of 500,000 or more, the department or a licensed
17 child welfare agency under contract with the department all of the following types
18 of cases cases reported to it. the sheriff or police department:

19 2g. The county department, department, or licensed child welfare agency may
20 require that a subsequent report of a case referred under subd. 2. or 2d. be made in
21 writing.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321.

22 **SECTION 13. 48.981 (3) (a) 2. a.** of the statutes is created to read:

1 48.981 (3) (a) 2. a. ✓ Cases in which a caregiver is suspected of abuse or neglect
2 or of threatened abuse or neglect of a child.

3 **SECTION 14.** 48.981 (3) (a) 2. b. ✓ of the statutes is created to read:

4 48.981 (3) (a) 2. b. Cases in which a caregiver is suspected of facilitating or
5 failing to take action to prevent the suspected or threatened abuse or neglect of a
6 child.

7 **SECTION 15.** 48.981 (3) (a) 2. c. ✓ of the statutes is created to read:

8 48.981 (3) (a) 2. c. Cases in which it cannot be determined who abused or
9 neglected or threatened to abuse or neglect ^athe child.

10 **SECTION 16.** 48.981 (3) (a) 2. d. ✓ of the statutes is created to read:

11 48.981 (3) (a) 2. d. Cases in which there is reason to suspect that an unborn
12 child has been abused or there is reason to believe that an unborn child is at
13 substantial risk of abuse.

14 **SECTION 17.** 48.981 (3) (a) 2d. ✓ of the statutes is created to read:

15 48.981 (3) (a) 2d. The sheriff or police department may refer to the county
16 department or, in a county having a population of 500,000 or more, the department
17 or a licensed child welfare agency under contract with the department a case
18 reported to the sheriff or police department in which a person who is not a caregiver
19 is suspected of abuse or neglect or of threatened abuse or neglect. ^{of a child}

20 **SECTION 18.** 48.981 (3) (c) 1. of the statutes is renumbered 48.981 (3) (c) 1. a.
21 and amended to read:

22 48.981 (3) (c) 1. a. ~~Within 24 hours~~ Immediately after receiving a report under
23 par. (a), the agency shall evaluate the report to determine whether there is reason
24 to suspect that a caregiver has abused or neglected the child, has threatened the child
25 with abuse or neglect, or has facilitated or failed to take action to prevent the

13
1 suspected or threatened abuse or neglect of the child. If the agency determines that
2 a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the
3 child, determined^g that a caregiver is suspected of facilitating or failing to take action
4 to prevent the suspected or threatened abuse or neglect of the child, or cannot
5 determine who abused or neglected the child, within 24 hours after receiving the
6 report the agency shall, in accordance with the authority granted to the department
7 under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a
8 diligent investigation to determine if the child or unborn child is in need of protection
9 or services. The If the agency determined^s that a person who is not a caregiver is
10 suspected of abuse or neglect or of threatened abuse or neglect, the agency may, in
11 accordance with that authority, initiate a diligent investigation to determine if the
12 child is in need or protection or services. Within 24 hours after receiving a report
13 under par. (a) of suspected unborn child abuse, the agency, in accordance with that
14 authority, shall initiate a diligent investigation to determine if the unborn child is
15 in need of protection or services. An investigation under this subd. 1. a[✓] shall be
16 conducted in accordance with standards established by the department for
17 conducting child abuse and neglect investigations or unborn child abuse
18 investigations.

19 b. If the investigation is of a report of child abuse or neglect or of threatened
20 child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues
21 to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report
22 that does not disclose who is suspected of the child abuse or neglect and in which the
23 investigation does not disclose who abused or neglected the child, the investigation
24 shall also include observation of or an interview with the child, or both, and, if
25 possible, an interview with the child's parents, guardian, or legal custodian. If the

1 investigation is of a report of child abuse or neglect or threatened child abuse or
2 neglect by a caregiver who continues to reside in the same dwelling as the child, the
3 investigation shall also include, if possible, a visit to that dwelling. At the initial visit
4 to the child's dwelling, the person making the investigation shall identify himself or
5 herself and the agency involved to the child's parents, guardian, or legal custodian.
6 The agency may contact, observe, or interview the child at any location without
7 permission from the child's parent, guardian, or legal custodian if necessary to
8 determine if the child is in need of protection or services, except that the person
9 making the investigation may enter a child's dwelling only with permission from the
10 child's parent, guardian, or legal custodian or after obtaining a court order
11 permitting the person to do so.

12 **SECTION 19.** 48.981 (3) (c) 4. of the statutes is amended to read:

13 48.981 (3) (c) 4. The county department or, in a county having a population of
14 500,000 or more, the department or a licensed child welfare agency under contract
15 with the department shall determine, within 60 days after receipt of a report that the
16 county department, department, or licensed child welfare agency investigates under
17 subd. 1., whether abuse or neglect has occurred or is likely to occur. The
18 determination shall be based on a preponderance of the evidence produced by the
19 investigation. A determination that abuse or neglect has occurred may not be based
20 solely on the fact that the child's parent, guardian, or legal custodian in good faith
21 selects and relies on prayer or other religious means for treatment of disease or for
22 remedial care of the child. In making a determination that emotional damage has
23 occurred, the county department or, in a county having a population of 500,000 or
24 more, the department or a licensed child welfare agency under contract with the
25 department shall give due regard to the culture of the subjects. This subdivision does

1 not prohibit a court from ordering medical services for the child if the child's health
2 requires it.

3 **SECTION 20.** 938.02 (15) of the statutes is amended to read:

4 938.02 (15) "Relative" means a parent, ~~grandparent, greatgrandparent,~~
5 stepparent, brother, sister, stepbrother, stepsister, half brother, half sister,
6 brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, or
7 aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the
8 prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption,
9 or the spouse of any person named in this subsection, even if the marriage is
10 terminated by death or divorce.

History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284.

11 **SECTION 21. Effective date.**

12 (1) CHILD ABUSE INVESTIGATIONS OF NONCAREGIVERS. The treatment of section
13 48.981 (3) (a) 2d.✓ and (3) (c) 1. (a)✓ and 4.✓ of the statutes, the renumbering and
14 amendment of section 48.981 (3) (a) 2.✓ of the statutes, and the creation of section
15 48.981 (3) (a) 2. a.✓, b.✓, c.✓, and d.✓ of the statutes take effect on the first day of the 6th
16 month beginning after publication.

17 (END)

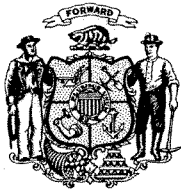
Jennifer Stegall

5/20/05

Ed Shilling Fond du Lac County

12

Explicitly provide that juv. ct. may transfer
guardianship to county after TPR only if
county agrees to accept g'ship and only for
purpose of adoption by foster parent, ie, not
to block adoption of child.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1850/1

GMM:wjl:rs

PM2

2005 BILL

Soon

Regen

1 AN ACT *to repeal* 48.981 (1) (fm); *to renumber and amend* 48.21 (1) (b), 48.981
2 (3) (a) 2. and 48.981 (3) (c) 1.; *to amend* 48.02 (15), 48.21 (1) (a), 48.57 (1) (hm),
3 48.57 (3m) (a) 2., 48.57 (3n) (a) 2., 48.62 (2), 48.75 (1g) (a) 1., 48.977 (1), 48.981
4 (3) (c) 4. and 938.02 (15); and *to create* 48.21 (1) (b) 1., 48.981 (3) (a) 2. a., 48.981
5 (3) (a) 2. b., 48.981 (3) (a) 2. c., 48.981 (3) (a) 2. d. and 48.981 (3) (a) 2d. of the
6 statutes; **relating to:** the investigation of child abuse or neglect reports in
7 which a person who is not a caregiver of the child is suspected of the abuse or
8 neglect of the child; defining the persons who are considered to be relatives of
9 a child or juvenile for purposes of the Children's Code and the Juvenile Justice
10 Code; extending the time for which a child may be held in custody when
11 additional time is required to determine whether the filing of a petition
12 initiating proceedings under the Children's Code is necessary; and the
13 authority of a county department of human services or social services in a
transfer of guardianship and custody of a child to

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- 1 county other than Milwaukee County ~~to place~~ ^{for placement of the} child for adoption in the home
 2 of the child's foster or treatment foster parents.

transfer of ~~a~~ guardianship and custody of a child to

Analysis by the Legislative Reference Bureau

This bill makes various changes to the Children's Code and the Juvenile Justice Code relating to the investigation of child abuse or neglect reports in which a person who is not a caregiver of the child is suspected of the abuse or neglect of the child; defining the persons who are considered to be relatives of a child or juvenile for purposes of the Children's Code and the Juvenile Justice Code; extending the time for which a child may be held in custody when additional time is required to determine whether the filing of a petition initiating proceedings under the Children's Code is necessary; and the ~~authority of~~ ^{for placement of the} a county department of human services or social services (county department) in a county other than Milwaukee County ~~to place~~ child for adoption in the home of the child's foster or treatment foster parents. The changes are as follows:

Child abuse investigations of noncaregivers

Under current law, certain persons having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur must report that suspected or threatened abuse or neglect to the county department of human services or social services or, in Milwaukee County, to the Department of Health and Family Services (DHFS) or a child welfare agency under contract with DHFS (collectively "agency") or to the sheriff or police department. Current law also permits any other person having reason to suspect that a child has been abused or neglected or reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur to make such a report.

Current law requires the sheriff or police department to refer to an agency all cases of child abuse or neglect reported to it and the agency, within 24 hours after receiving a report, to initiate a diligent investigation to determine if the child is in need of protection or services. Current law also specifies certain procedures that an agency must follow in investigating cases in which there is reason to suspect that the child was abused or neglected, or was threatened with abuse or neglect, by a caregiver, which is defined under current law as a relative, guardian, or legal custodian of the child; a person who resides or has resided regularly or intermittently in the same dwelling as the child; an employee of a residential facility or a residential care center for children and youth in which the child was or is placed; a person who provides or has provided care for the child in or outside of the child's home; or any other person who exercises or has exercised temporary or permanent control or supervision over the child.

This bill permits, rather than requires, the sheriff or police department to refer to an agency a case in which a person who is not a caregiver of a child is suspected of the abuse or neglect, or of the threatened abuse or neglect, of the child and permits,

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rather than requires, the agency to initiate a diligent investigation to determine if the child is in need of protection or services. In cases in which a caregiver is suspected of the abuse or neglect, or of the threatened abuse or neglect, of a child, in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child, or in which it cannot be determined who abused or neglected a child, the sheriff or police department must refer the case to an agency and the agency must investigate the case as under current law.

Definition of “relative” in Children’s Code and Juvenile Justice Code

Currently, for purposes of the Children’s Code and the Juvenile Justice Code, a “relative” of a child or juvenile is defined as a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt, whether the relationship is by blood, marriage, or adoption. For the purpose of determining eligibility to receive kinship care or long-term kinship care payments for providing care and maintenance for a child, for the purpose of determining eligibility to be appointed as the guardian of a child in need of protection or services, and for the purpose of exempting a relative who is providing care and maintenance for a child from having to obtain a foster home license, the definition is expanded to include a stepbrother or stepsister, any person of a preceding generation as denoted by the prefix grand, great, or great-great, and the spouse of any relative, even if the marriage is terminated by death or divorce. The definition is also expanded for purposes of investigating any suspected or threatened abuse or neglect of a child by a caregiver of the child to include a second cousin, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle, or steppaunt.

This bill expands the definitions of a “relative” of a child or juvenile for purposes of the Children’s Code and the Juvenile Justice Code to include, in addition to the relatives currently listed in those definitions, a stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, second cousin, stepuncle, steppaunt, any person of a preceding generation as denoted by the prefix grand, great, or great-great, and the spouse of any relative, even if the marriage is terminated by death or divorce. The bill also conforms the various other definitions of “relative” found in the Children’s Code to the expanded definition, except that under the bill the definitions of “kinship care relative,” “long-term kinship care relative,” and “relative,” for purposes of eligibility to be appointed as the guardian of a child in need of protection or services, do not include a parent of the child.

Holding a child in custody

Under current law, if a child who has been taken into custody under the Children’s Code is not released, a judge of the court assigned to exercise jurisdiction under the Children’s Code (juvenile court) or a circuit court commissioner must conduct a hearing within 48 hours of the time the decision to hold the child in custody was made, exclusive of Saturdays, Sundays, and legal holidays, and a petition initiating proceedings under the Children’s Code must be filed by the time of the hearing. If a hearing is not held within the time required or if a petition is not filed by the time of the hearing, the child must be released, except that if a hearing is held, but no petition is filed, the child may be held in custody for an additional 72 hours,

BILL

exclusive of Saturdays, Sundays, and legal holidays, if the juvenile court judge or circuit court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or others or that the child's parent, guardian, or legal custodian or another responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care for the child.

This bill permits a child to be held in custody for an additional 72 hours, when no petition is filed by the time of the custody hearing, if the juvenile court judge or circuit court commissioner determines that probable cause exists to believe that additional time is required to determine whether the filing of a petition initiating proceedings under the Children's Code is necessary.

Placement of a child for adoption

~~Current law permits a county department in a county other than Milwaukee County to accept guardianship of a child whom the county department has placed in a foster or treatment foster home and to place the child for adoption by the child's foster or treatment foster parents. This bill specifies that a county department in a county other than Milwaukee County that accepts guardianship of a child whom the county department has placed in a foster or treatment foster home may place the child only in the home of the child's foster or treatment foster parents and only for the purpose of adoption by those parents.~~

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.02 (15) of the statutes is amended to read:

48.02 (15) "Relative" means a parent, ~~grandparent, greatgrandparent,~~
stepparent, brother, sister, ~~stepbrother, stepsister,~~ half brother, half sister,
brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, or
aunt. ~~This relationship shall be,~~ stepuncle, stepaunt, or any person of a preceding
generation as denoted by the prefix of grand, great, or great-great, whether by blood,
marriage, or legal adoption, or the spouse of any person named in this subsection,
even if the marriage is terminated by death or divorce.

SECTION 2. 48.21 (1) (a) of the statutes is amended to read:

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1 48.21 (1) (a) If a child who has been taken into custody is not released under
2 s. 48.20, a hearing to determine whether the child shall continue to be held in custody
3 under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit
4 court commissioner within 48 hours of the time the decision to hold the child was
5 made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing
6 a petition under s. 48.25 shall be filed, except that no petition need be filed ~~where a~~
7 when the child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or ~~where~~ when
8 the child is a runaway from another state, in which case a written statement of the
9 reasons for holding ~~a~~ the child in custody shall be substituted if the petition is not
10 filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays,
11 and legal holidays, or if no petition or statement has been filed at the time of the
12 hearing, the child shall be released except as provided in ~~par. (b)~~ pars. (b) and (bm).
13 A parent not present at the hearing shall be granted a rehearing upon request for
14 good cause shown.

15 **SECTION 3.** 48.21 (1) (b) of the statutes is renumbered 48.21 (1) (b) (intro.) and
16 amended to read:

17 48.21 (1) (b) (intro.) If no petition has been filed by the time of the hearing, a
18 child may be held in custody with approval of the judge or circuit court commissioner
19 for an additional 72 hours from the time of the hearing, excluding Saturdays,
20 Sundays, and legal holidays, only if, as a result of the facts brought forth at the
21 hearing, the judge or circuit court commissioner determines that probable cause
22 exists to believe ~~that~~ any of the following:

23 2. That the child is an imminent danger to himself or herself or to others, that,

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SECTION 3

1 3. That probable cause exists to believe that the parent, guardian, or legal
2 custodian of the child or other responsible adult is neglecting, refusing, unable, or
3 unavailable to provide adequate supervision and care or,

4 4. That, if the child is an expectant mother who was taken into custody under
5 s. 48.19 (1) (cm) or (d) 8., that probable cause exists to believe that there is a
6 substantial risk that if the child expectant mother is not held, the physical health of
7 the unborn child, and of the child when born, will be seriously affected or endangered
8 by the child expectant mother's habitual lack of self-control in the use of alcohol
9 beverages, controlled substances, or controlled substance analogs, exhibited to a
10 severe degree, and to believe that the child expectant mother is refusing or has
11 refused to accept any alcohol or other drug abuse services offered to her or is not
12 making or has not made a good faith effort to participate in any alcohol or other drug
13 abuse services offered to her. The

14 (bm) An extension under par. (b) may be granted only once for any petition. In
15 the event of failure to file a petition within the extension period provided for in this
16 paragraph par. (b), the judge or circuit court commissioner shall order the child's
17 immediate release from custody.

18 **SECTION 4.** 48.21 (1) (b) 1. of the statutes is created to read:

19 48.21 (1) (b) 1. That additional time is required to determine whether the filing
20 of a petition initiating proceedings under this chapter is necessary.

21 **SECTION 5.** 48.57 (1) (hm) of the statutes is amended to read:

22 48.57 (1) (hm) If a county department in a county with a population of less than
23 500,000, to accept guardianship, when appointed by the court, of a child whom the
24 county department has placed in a foster home or treatment foster home under a
25 court order or voluntary agreement under s. 48.63 and to place that child under its

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1 ~~guardianship for adoption by the foster parent or treatment foster parent. A county~~
2 ~~department that accepts guardianship of a child under this paragraph may place the~~
3 ~~child only in a placement and only for the purpose authorized in this paragraph.~~

4 **SECTION 6.** 48.57 (3m) (a) 2. of the statutes is amended to read:

5 48.57 **(3m)** (a) 2. "Kinship care relative" means a ~~stepparent, brother, sister,~~
6 ~~stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a~~
7 ~~preceding generation as denoted by the prefix of grand, great or great-great,~~
8 ~~whether by blood, marriage or legal adoption, or the spouse of any person named in~~
9 ~~this paragraph, even if the marriage is terminated by death or divorce~~ relative other
10 than a parent.

11 **SECTION 7.** 48.57 (3n) (a) 2. of the statutes is amended to read:

12 48.57 **(3n)** (a) 2. "Long-term kinship care relative" means a ~~stepparent,~~
13 ~~brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any~~
14 ~~person of a preceding generation as denoted by the prefix of grand, great or~~
15 ~~great-great, whether by blood, marriage or legal adoption, or the spouse of any~~
16 ~~person named in this paragraph, even if the marriage is terminated by death or~~
17 ~~divorce~~ relative other than a parent.

18 **SECTION 8.** 48.62 (2) of the statutes is amended to read:

19 48.62 **(2)** A relative as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a)
20 or a guardian of a child, who provides care and maintenance for a the child, is not
21 required to obtain the license specified in this section. The department, county
22 department, or licensed child welfare agency as provided in s. 48.75 may issue a
23 license to operate a foster home or a treatment foster home to a relative who has no
24 duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster
25 home or treatment foster home for a specific child who is either placed by court order

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1 or who is the subject of a voluntary placement agreement under s. 48.63. The
2 department, a county department, or a licensed child welfare agency may, at the
3 request of a guardian appointed under s. 48.977 or 48.978 or ch. 880, license the
4 guardian's home as a foster home or treatment foster home for the guardian's minor
5 ward who is living in the home and who is placed in the home by court order.
6 Relatives with no duty of support and guardians appointed under s. 48.977 or 48.978
7 or ch. 880 who are licensed to operate foster homes or treatment foster homes are
8 subject to the department's licensing rules.

9 **SECTION 9.** 48.75 (1g) (a) 1. of the statutes is amended to read:

10 48.75 (1g) (a) 1. The person who will be licensed to operate the foster home is
11 a relative, ~~as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a) 2. a.,~~ or a
12 guardian of the child who will be placed in the foster home.

13 **SECTION 10.** 48.977 (1) of the statutes is amended to read:

14 48.977 (1) DEFINITION. In this section, "relative" means a relative ~~as defined~~
15 ~~in s. 48.02 (15) or a person specified in s. 48.57 (3m) (a) 2~~ other than a parent.

16 **SECTION 11.** 48.981 (1) (fm) of the statutes is repealed.

17 **SECTION 12.** 48.981 (3) (a) 2. of the statutes is renumbered 48.981 (3) (a) 2.
18 (intro.) and amended to read:

19 48.981 (3) (a) 2. (intro.) The sheriff or police department shall within 12 hours,
20 exclusive of Saturdays, Sundays, or legal holidays, refer to the county department
21 or, in a county having a population of 500,000 or more, the department or a licensed
22 child welfare agency under contract with the department all of the following types
23 of cases reported to it. the sheriff or police department:

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1 2g. The county department, department, or licensed child welfare agency may
2 require that a subsequent report of a case referred under subd. 2. or 2d. be made in
3 writing.

4 **SECTION 13.** 48.981 (3) (a) 2. a. of the statutes is created to read:

5 48.981 (3) (a) 2. a. Cases in which a caregiver is suspected of abuse or neglect
6 or of threatened abuse or neglect of a child.

7 **SECTION 14.** 48.981 (3) (a) 2. b. of the statutes is created to read:

8 48.981 (3) (a) 2. b. Cases in which a caregiver is suspected of facilitating or
9 failing to take action to prevent the suspected or threatened abuse or neglect of a
10 child.

11 **SECTION 15.** 48.981 (3) (a) 2. c. of the statutes is created to read:

12 48.981 (3) (a) 2. c. Cases in which it cannot be determined who abused or
13 neglected or threatened to abuse or neglect a child.

14 **SECTION 16.** 48.981 (3) (a) 2. d. of the statutes is created to read:

15 48.981 (3) (a) 2. d. Cases in which there is reason to suspect that an unborn
16 child has been abused or there is reason to believe that an unborn child is at
17 substantial risk of abuse.

18 **SECTION 17.** 48.981 (3) (a) 2d. of the statutes is created to read:

19 48.981 (3) (a) 2d. The sheriff or police department may refer to the county
20 department or, in a county having a population of 500,000 or more, the department
21 or a licensed child welfare agency under contract with the department a case
22 reported to the sheriff or police department in which a person who is not a caregiver
23 is suspected of abuse or neglect or of threatened abuse or neglect of a child.

24 **SECTION 18.** 48.981 (3) (c) 1. of the statutes is renumbered 48.981 (3) (c) 1. a.

25 and amended to read:

BILL**SECTION 18**

1 48.981 (3) (c) 1. a. Within 24 hours Immediately after receiving a report under
2 par. (a), the agency shall evaluate the report to determine whether there is reason
3 to suspect that a caregiver has abused or neglected the child, has threatened the child
4 with abuse or neglect, or has facilitated or failed to take action to prevent the
5 suspected or threatened abuse or neglect of the child. If the agency determines that
6 a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the
7 child, determines that a caregiver is suspected of facilitating or failing to take action
8 to prevent the suspected or threatened abuse or neglect of the child, or cannot
9 determine who abused or neglected the child, within 24 hours after receiving the
10 report the agency shall, in accordance with the authority granted to the department
11 under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a
12 diligent investigation to determine if the child or unborn child is in need of protection
13 or services. The If the agency determines that a person who is not a caregiver is
14 suspected of abuse or neglect or of threatened abuse or neglect, the agency may, in
15 accordance with that authority, initiate a diligent investigation to determine if the
16 child is in need or protection or services. Within 24 hours after receiving a report
17 under par. (a) of suspected unborn child abuse, the agency, in accordance with that
18 authority, shall initiate a diligent investigation to determine if the unborn child is
19 in need of protection or services. An investigation under this subd. 1. a. shall be
20 conducted in accordance with standards established by the department for
21 conducting child abuse and neglect investigations or unborn child abuse
22 investigations.

23 b. If the investigation is of a report of child abuse or neglect or of threatened
24 child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues
25 to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report

BILL

1 that does not disclose who is suspected of the child abuse or neglect and in which the
2 investigation does not disclose who abused or neglected the child, the investigation
3 shall also include observation of or an interview with the child, or both, and, if
4 possible, an interview with the child's parents, guardian, or legal custodian. If the
5 investigation is of a report of child abuse or neglect or threatened child abuse or
6 neglect by a caregiver who continues to reside in the same dwelling as the child, the
7 investigation shall also include, if possible, a visit to that dwelling. At the initial visit
8 to the child's dwelling, the person making the investigation shall identify himself or
9 herself and the agency involved to the child's parents, guardian, or legal custodian.
10 The agency may contact, observe, or interview the child at any location without
11 permission from the child's parent, guardian, or legal custodian if necessary to
12 determine if the child is in need of protection or services, except that the person
13 making the investigation may enter a child's dwelling only with permission from the
14 child's parent, guardian, or legal custodian or after obtaining a court order
15 permitting the person to do so.

16 **SECTION 19.** 48.981 (3) (c) 4. of the statutes is amended to read:

17 48.981 (3) (c) 4. The county department or, in a county having a population of
18 500,000 or more, the department or a licensed child welfare agency under contract
19 with the department shall determine, within 60 days after receipt of a report that the
20 county department, department, or licensed child welfare agency investigates under
21 subd. 1., whether abuse or neglect has occurred or is likely to occur. The
22 determination shall be based on a preponderance of the evidence produced by the
23 investigation. A determination that abuse or neglect has occurred may not be based
24 solely on the fact that the child's parent, guardian, or legal custodian in good faith
25 selects and relies on prayer or other religious means for treatment of disease or for

BILL**SECTION 19**

1 remedial care of the child. In making a determination that emotional damage has
2 occurred, the county department or, in a county having a population of 500,000 or
3 more, the department or a licensed child welfare agency under contract with the
4 department shall give due regard to the culture of the subjects. This subdivision does
5 not prohibit a court from ordering medical services for the child if the child's health
6 requires it.

7 **SECTION 20.** 938.02 (15) of the statutes is amended to read:

8 938.02 (15) "Relative" means a parent, ~~grandparent, greatgrandparent,~~
9 stepparent, brother, sister, stepbrother, stepsister, half brother, half sister,
10 brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, or
11 aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the
12 prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption,
13 or the spouse of any person named in this subsection, even if the marriage is
14 terminated by death or divorce.

15 **SECTION 21. Effective date.**

16 (1) CHILD ABUSE INVESTIGATIONS OF NONCAREGIVERS. The treatment of section
17 48.981 (3) (a) 2d. and (3) (c) 1. and 4. of the statutes, the renumbering and
18 amendment of section 48.981 (3) (a) 2. of the statutes, and the creation of section
19 48.981 (3) (a) 2. a., b., c., and d. of the statutes take effect on the first day of the 6th
20 month beginning after publication.

21 (END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1850/2ins
...GMM:.....

(INSERT 7-3)

SECTION 1 48.425 (1) (f) of the statutes is amended to read:

48.425 (1) (f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. or (am) and include a presentation of the factors ~~which~~ that might prevent adoption, those ~~which~~ that would facilitate it adoption, and the agency ~~which~~ that would be responsible for accomplishing the adoption.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237.

SECTION 2 48.425 (1) (g) of the statutes is amended to read:

48.425 (1) (g) If an agency designated under s. 48.427 (3m) (a) 1. to 4. or (am) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child or a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237.

SECTION 3 48.427 (3m) (intro.) of the statutes is amended to read:

48.427 (3m) (intro.) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall ~~either~~ do one of the following:

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289; 1997 a. 80, 104, 237.

SECTION 4 48.427 (3m) (a) 1. of the statutes is amended to read:

48.427 (3m) (a) 1. A county department authorized to accept guardianship under s. 48.57 (1) (e) ~~or (hm)~~.

SECTION 5. 48.427 (3m) (am) of the statutes is created to read:

48.427 (3m) (am) Transfer guardianship and custody of the child to a county department authorized to accept guardianship under s. 48.57 (1) (hm) for placement of the child for adoption by the child's foster parent or treatment foster parent, if the county department has agreed to accept guardianship and custody of the child and the foster parent or treatment foster parent has agreed to adopt the child.

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289; 1997 a. 80, 104, 237.

SECTION 6. 48.428 (2) (a) of the statutes is amended to read:

48.428 (2) (a) Except as provided in par. (b), when a court places a child in sustaining care after an order under s. 48.427 (4), the court shall transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am) and place the child in the home of a licensed foster parent, licensed treatment foster parent, or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent, licensed treatment foster parent, or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1995 a. 275, 289; 1997 a. 27, 164; 1999 a. 9.

SECTION 7. 48.428 (2) (b) of the statutes is amended to read:

48.428 (2) (b) When a court places a child in sustaining care after an order under s. 48.427 (4) with a person who has been appointed as the guardian of the child under s. 48.977 (2), the court may transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or

a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am) and place the child in the home of a licensed foster parent, licensed treatment foster parent, or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, that licensed foster parent, licensed treatment foster parent, or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), the court shall terminate the guardianship under s. 48.977.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1995 a. 275, 289; 1997 a. 27, 164; 1999 a. 9.

SECTION 8. 48.43 (5) (c) of the statutes is amended to read:

48.43 (5) (c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1. to 4. which or (am) that consents to the transfer, if the court determines that the transfer is in the child's best interest. If an order is amended, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

History: 1979 c. 330; 1983 a. 27, 219, 286; 1985 a. 70, 176, 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1993 a. 395, 446; 1995 a. 275; 1997 a. 237.

(END OF INSERT)

(INSERT A)

* Under current law, ~~if~~ the parental rights of both parents or of the only living parent of a child are terminated, the juvenile court must do one of the following:

1. Transfer guardianship and custody of the child pending adoptive placement to a county department that is authorized to accept guardianship of a child, for purposes of placing a child for adoption, to a child welfare agency that is licensed to accept guardianship of a child and to place the child for adoption, to DHFS, to a *

relative with whom the child resides, or to an individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

2. Transfer guardianship of the child to a county department, child welfare agency, or DHFS and custody of the child to a relative or to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights (TPR).

This bill permits the juvenile court, following a TPR, to transfer guardianship and custody of a child to a county department of a county other than Milwaukee County for placement of the child for adoption by the child's foster parent or treatment foster parent, only if the county department has agreed to accept guardianship and custody of the child and the foster parent or treatment foster parent has agreed to adopt the child.

(END OF INSERT)

(END)

Barman, Mike

From: Stegall, Jennifer
Sent: Thursday, July 28, 2005 1:10 PM
To: LRB.Legal
Subject: Bill jackets

Hi,

Please send to Senator Roessler's office the bill jackets for LRB 1852/1 and LRB 1850/2.

Thanks,

Jennifer Stegall
Office of Senator Carol Roessler
608-266-5300/1-888-736-8720
Jennifer.Stegall@legis.state.wi.us



Stegall,
Jennifer.vcf